

REMARKS/ARGUMENT

Claims 3, 6, 10, 14-18, 25-26 have been cancelled. Claims 1-2, 7-9, 11, and 24 have been amended with this response.

Prior to this Amendment, the pending claims were rejected as being anticipated by or obvious in view of Russel et al.. The Applicant has reviewed Russel et al. in detail, including the portions of Russel et al. not cited by the Examiner. That review did not reveal the presence of several claim limitations the Examiner had asserted that reference contained. Furthermore, Applicant was unable to determine from the first and second Office actions what reasons the Examiner had for asserting these limitation were met by Russel et al. These were the points raised by Applicant's Reply, dated November 7, 2007, and Applicants Request for Correction of Errors, submitted April 7, 2008.

The Advisory Action of May 14, 2008 presented a clear though different explanation of these rejections: many of the claim limitations at issue were considered non-functional descriptive data without a functional relationship to the steps of the claim.¹ The Applicant has reviewed the authorities cited by the Examiner, except for the opinion of In re Mathias, which Applicant could not find on the USPTO website.

With this reply, the Applicant responds by amending the claims to include additional steps and by creating explicit relationships between descriptive content and concrete steps or actions. Claim 1 has been amended to require the actions of funeral attendees accepting the offer to receive the funeral anniversary reminder and the service provider delivering the reminder. The descriptive content of the advising step is now required to have tangible results in the form of attendees who would not otherwise, accept the reminder offer and receive the reminder. Dependent claim 2, provides an additional functional result from the descriptive content: attendees send notes to

¹ The Applicant made a request by telephone that the final status of the rejection be withdrawn on the ground that the thrust of the rejection was changed. The Examiner's supervisor responded by telephone on July 9, 2008, refusing.

bereaved persons on our about the funeral anniversary. Independent claims 9 and 24 have been amended to include comparable requirements.

The present invention as claimed relates to the novel idea of having funeral directors encourage and facilitate funeral attendees providing condolences to bereaved persons on the occasion of a funeral anniversary. This appears to be a novel method. If it were obvious, it would certainly have been practiced before as it provides an effective way for funeral homes to reach prospective clientele and demonstrate their ability to understand and facilitate the grieving process.

With regard to non-obviousness, there are two cases. There is the case where the method and its merits were self-evident prior to Applicant's invention. In view of the continuing need for funeral homes to compete effectively, the failure of others to strike upon and implement the idea is objective evidence that the idea is not obvious. If the method were obvious and its merits self-evident, then it would certainly have been used, and would now be used commonly.

The other case is where the method or its merits were not self-evident prior to Applicant's invention. Applicant believes this is the case. It is widely held that an unexpected reminder of a death long after the death could be a faux pas and could result in renewed feelings of grief and loss. A funeral business making suggestions leading to such faux pas would likely suffer severe damage to its reputation. The risk of faux pas and negative responses would have dissuaded a funeral business from implementing the claimed methods.

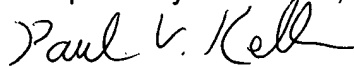
Contrary to expectations, the Applicant's research showed uniform positive responses to condolence notes delivered on funeral anniversaries, provided the guidelines presented in Applicant's specification were followed (See, e.g., Figure 8 for guidelines), but a funeral business of the prior art would not know this. The objective evidence is that those of ordinary skill in the art either failed to think of the method or failed to recognize its potential for achieving positive results without undue offsetting negative results.

Allowing a patent on the present invention would be in keeping with the purpose of the US Constitution in providing for a patent system. The invention required research to develop. It will require more effort to convince the industry that it works. If these steps are undertaken, funeral businesses will profit, consumers will benefit from better funeral homes, and persons mourning loved one will be gratified to receive heartfelt notes that ease their grief.² Without a patent, the inventor will be denied financial incentive to publicize and promote the invention. With a patent, the inventor will have financial incentive and the results will be tangible.

CONCLUSION

The Applicant requests reconsideration of this application in view of this reply.

Respectfully submitted,



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² This is not puffing. This is exactly what the inventor observed.